IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 692 (SS) of 2006

Bhola Dutt
S/o Shiv Dutt,
R/o Village- Dabhar,
P.O.- Pali,
District – Almora. **.....Petitioner.**

Versus

1. Kumaon Jal Sansthan Nainital through its General Manager.
2. Executive Engineer, Kumaon Jal Sansthan, Ranikhet.
3. Junior Engineer, Kumaon Jal Sansthan, Bhikyasain.

.....Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sri J. C. Pandey, learned counsel for the petitioner and Sri J.P. Joshi, learned counsel for the respondents.

By means of this writ petition, petitioner has prayed for the following reliefs:

a. *issue a writ, order or direction in the nature of Certiorari quashing the notice dated 19.04.2006 (Annexure no. 9) issued by respondent no. 2 and received by the petitioner on 18.05.2006.*

b. *issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 26.05.2006 issued by respondent no. 2.*

c. *Issue a writ, order or direction in the nature of Mandamus directing the respondent to permit to continue in service till August 2009 on the basis of his correct date of birth as 10.08.1949.*

d. *Issue a writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

e. *Allow this writ petition and award the costing in favour of the petitioner.*

The stand of the petitioner is that petitioner was appointed as Beldar with the respondent department and vide order dated 19.04.2006 petitioner was informed that he is going to be retired on 31.05.2006. Later on, a corrigendum was issued by the department that petitioner is going to be retired on 31.08.2006 as per date of birth mentioned in the service record.

Learned counsel for the petitioner has submitted that service record of the petitioner is not correct and the actual date of birth of the petitioner is 10.08.1949 whereas in the service record it is mentioned as 10.08.1946.

Learned counsel for the respondents has submitted that petitioner is not high school passed and in absence of high school certificate the date of birth recorded in the service record in final. Further petitioner has applied for change of his date of birth at the fag end of his service and it is well settled law that date of birth cannot be changed at the fag end of service and accordingly, petitioner was directed to be retired with effect from 31.08.2006.

Initially, this court vide dated 23.05.2006 directed the respondents to permit the petitioner to continue on the post till next date of listing and in pursuance to the interim order, according to the petitioner, petitioner is still continuing on the post of Beldar.

So far as change of date of birth of petitioner is considered petitioner has not shown any substantive material for change of his date of birth.

Learned counsel for the respondents has submitted that in the service record date of birth of the petitioner is mentioned on the basis of Form which has been submitted by him, when the services of the petitioner were transferred from Jal Nigam to Jal Sansthan.

In these circumstances, I do no find any merit in the case for change of date of birth.

Petitioner has submitted that petitioner is not getting salary since 01.09.2006 till date though he is working with the department till date.

In case, petitioner is still working on the basis of interim order passed by this court, respondents are directed to make payment of salary for the period during which he has actually worked with the department at the earliest.

With this direction, writ petition and all the pending applications are disposed of. No order as to costs.

(M.M. Ghildiyal, J)

August 07, 2007
SKS